

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERRANCE J. DOYLE and DEPARTMENT OF AGRICULTURE,
PERSONNEL OPERATIONS BRANCH, Minneapolis, MN

*Docket No. 99-1447; Submitted on the Record;
Issued November 17, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant sustained an injury in the performance of duty on November 29, 1995, as alleged.

On December 11, 1995 appellant, then a 62-year-old food inspector, filed a claim for a traumatic injury, alleging that, on November 29, 1995, he tripped over a cardboard box while walking behind the meat counter on his way to the sausage smokehouse. He stated that he sustained a possible dislocation of the right shoulder, a bruise to his left knee, and a minor sprain of the left arm and shoulder.

Appellant submitted medical evidence consisting of a hospital note dated January 18, 1996 showing that he had "probable impingement syndrome to both shoulders," an attending physician's report dated November 29, 1995 containing the diagnosis bilateral shoulder and wrist pain, and a work restriction form dated November 29, 1995. A physical therapist's report dated January 18, 1996, stated that appellant fell over a box jarring his shoulders while working at the employing establishment on November 29, 1995 and continued to have pain in his bilateral shoulders which worsened with activity.

By letter dated February 7, 1996, the Office of Workers' Compensation Programs requested additional information from appellant including a statement as to whether he had any disability before or after the injury.

By decision dated April 22, 1996, the Office denied the claim, stating that the evidence of record failed to establish that an injury was sustained as alleged. Appellant subsequently requested reconsideration of the decision three times and the Office denied appellant's requests for modification on September 12, 1996, March 19, 1997 and March 17, 1998. Appellant submitted a narrative statement.

Appellant submitted additional medical evidence to support his requests for reconsideration. In an x-ray report dated November 29, 1995, Dr. Thomas J. Luttenegger, a Board-certified diagnostic radiologist, stated:

“My concern is directed to a very subtle white line that projects over the scapular blade in a vertical fashion. This may represent a fracture of the scapula. We do not see it on the opposite side and typically subtle fractures with overlapping will call this type of straight line. Please correlate clinically.”

Under his “Impression,” Dr. Luttenegger stated that he questioned “the possibility of a subtle linear vertical fracture in the scapular blade on the right but [could] not confirm same on this study and require[d] ... clinical correlation.”

Appellant also submitted medical evidence consisting of a report dated January 18, 1996 from Dr. Philip Scott Johnston, a Board-certified emergency medicine specialist, in which he diagnosed “probably impingement syndrome, bilateral shoulders” and a medical note dated November 29, 1995 which diagnosed bilateral shoulder and left knee pain.

Under “physical assessment” in the emergency room record dated November 29, 1995, Dr. James K. Teumer, an osteopath, stated that the right knee had a minor contusion and stated under the “Course in the Emergency Department” that the x-rays of the bilateral acromioclavicular joint showed degenerative change in the joint and the bone structure itself but no acute bony abnormality of fracture was detected. He diagnosed bilateral shoulder and wrist pain. Under the “Discharge Plan” dated November 29, 1995, Dr. Teumer gave appellant Vicodin and Naprosyn prepacks to use and a work restriction report.

Further, appellant submitted a report dated October 11, 1996, in which Dr. Jack Harvey noted that appellant had bilateral shoulder pains since he fell in November 1995 on both shoulders. He stated that at the time appellant was “thought to have impingement syndrome” and appellant stated that over the past year his condition had not improved. Dr. Harvey diagnosed bilateral impingement and rotator cuff tendinitis and opined that it was possible that appellant had a small tear. In a report dated October 17, 1996, Dr. Harvey diagnosed either “sprain/strain of the shoulder or impingement.” A physical therapy report dated October 18, 1996, stated that appellant continued to have pain in his bilateral shoulders.

In support of his March 2, 1998 request for modification, appellant submitted two medical reports one from Dr. Harvey dated November 26, 1997 and one from Dr. James K. Horstman, a Board-certified orthopedic surgeon, dated February 10, 1998. In his November 26, 1997 report, Dr. Harvey stated that at the time appellant saw him approximately on October 11, 1996, appellant had come in with shoulder pain from a fall that occurred in November 1995. He diagnosed impingement syndrome with rotator cuff tendinitis and stated that he treated appellant with an injection of Celestone and Xylocaine. Dr. Harvey stated that he discussed the possibility of obtaining a magnetic resonance imaging (MRI) scan, but appellant pursued physical therapy, improved “a little bit,” then went on a home program. He stated that appellant returned on November 24, 1997, with his shoulder still bothering him, his right worse than his left and they obtained an MRI scan which showed a complete tear of his subscapularis tendon and atrophy of

the subscapularis muscle. Dr. Harvey stated that it was “most likely” that appellant would need surgical repair.

In his February 10, 1998 report, Dr. Horstman, a Board-certified orthopedic surgeon, stated that appellant had a tear of the rotator cuff of his right shoulder. He stated:

“His problems, per our records, started in November of 1995 when he fell. He has undergone an MRI scan which has identified the complete tear of one of the muscles of the rotator cuff. It is possible that he may be a candidate for surgery to fix this torn tendon.”

By decision dated March 17, 1998, the Office denied appellant’s request for reconsideration.

The Board finds that the appellant sustained an injury in the performance of duty on November 29, 1995, as alleged.

An employee seeking benefits under the Federal Employees’ Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.¹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.²

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.³ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁴ An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.⁵

In the present case, appellant has presented sufficient evidence to establish that he sustained an injury in the performance of duty, as alleged. The November 29, 1995 x-ray report from Dr. Luttenegger showed a very subtle white line projected over the scapular blade in a

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

³ *Robert J. Krstyen*, 44 ECAB 227, 229 (1992); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁴ *Id.*

⁵ *See Louise F. Barnett*, 47 ECAB 639, 643 (1996).

vertical fashion which he thought might have represented a fracture of the scapular and required clinical correlation. In his November 26, 1997 report, Dr. Harvey stated that, when he first saw appellant in October 1996 for shoulder pain related to a November 1995 fall, he diagnosed impingement syndrome with rotator cuff tendinitis and treated appellant with injections of Celestone and Xylocaine. Although appellant improved slightly with physical therapy, upon appellant's return on November 24, 1997 still complaining of shoulder pain, Dr. Harvey obtained an MRI scan which showed a complete tear of appellant's subscapularis tendon and atrophy of the subscapularis muscle. Further, the medical evidence contemporaneous to appellant's November 29, 1995 employment injury consistently showed that appellant had shoulder pain and contained diagnoses of bilateral rotator cuff tendinitis with impingement or sprain and strain of the shoulder, and as of the date of the November 29, 1995 employment injury, appellant required work restrictions. In his February 10, 1998 report, Dr. Horstman confirmed that the MRI scan showed a complete tear of the muscles of the rotator cuff. The evidence of record consisting of medical reports, work restrictions reports, x-rays and an MRI scan shows that appellant sustained bilateral shoulder injuries on November 29, 1995 of which pain was a significant concomitant, that he had a suspected fracture of the scapula, a tear of the subscapularis tendon and atrophy of the subscapularis muscle causally related to the November 29, 1995 employment injury. The Office's decision holding that appellant did not sustain an injury in the performance of duty must be reversed and the case remanded for the Office to make findings for payment of continuation of pay, disability compensation and medical treatment.

The decision of the Office of Workers' Compensation Programs dated March 17, 1998 is hereby reversed and the case returned to the Office for further action consistent with this decision.

Dated, Washington, DC
November 17, 2000

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member